

or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period. New financial assistance does not include assistance approved prior to the beginning of termination proceedings.

(2) A deferral may not begin until the recipient has received a notice of opportunity for a hearing under paragraph (a)(1) of this section. A deferral may not continue for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and TVA. A deferral may not continue for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

[46 FR 30811, June 11, 1981, as amended at 68 FR 51357, Aug. 26, 2003]

§ 1309.16 What is the alternate funds disbursal procedure?

When TVA withholds funds from a recipient under this part, TVA may contract to disburse the withheld funds directly to any public or nonprofit private organization or agency, or State or political subdivision of the State. These alternate recipients must demonstrate the ability to comply with this part and to achieve the goals of the Federal financial assistance involved.

[46 FR 30811, June 11, 1981, as amended at 68 FR 51357, Aug. 26, 2003]

§ 1309.17 What is the procedure for hearings and issuance of TVA decisions required by this part?

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1309.15(a)(1), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected recipient. This notice shall advise the recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the recipient may request of TVA that the matter be scheduled for hearing or (2) advise the recipient that the matter in question

has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. A recipient may waive a hearing and submit written information and argument for the record. The failure of a recipient to request a hearing under this subsection or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under the Act and § 1309.15(a)(1) and a consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the time and place fixed by TVA unless it determines that the convenience of the recipient requires that another place be selected. Hearings shall be held before a hearing officer who shall be designated by TVA's General Manager, and who shall not be a TVA employee.

(c) *Right to counsel.* In all proceedings under this section, the recipient and TVA shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof by TVA's Board of Directors shall be conducted in conformity with this part and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters, as prescribed by the hearing officer. Both TVA and the recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the hearing officer at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to

subject testimony to test by cross-examination shall be applied where reasonably necessary by the hearing officer. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or received for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with this part with respect to two or more Federal statutes, authorities, of other means by which Federal financial assistance is extended and to which this part applies, or non-compliance with this part and the regulations of one or more other Federal departments or agencies issued under the Act, the TVA Board may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of the rules of procedure applicable to such hearings by such other departments or agencies. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with paragraph (f) of this section.

(f) *Decisions.* (1) After the hearing, or after the hearing is waived under paragraph (a) of this section, the hearing officer shall make an initial decision. The recipient may file exceptions to the decision with the TVA Board within 10 days of receipt of the decision. If exceptions are not filed within the specified time, the hearing officer's initial decision becomes the final TVA decision.

(2) Based on the hearing record, investigation, and any written submission to the hearing officer or the TVA Board, the Board shall render its decision accepting the initial decision, or rejecting it, in whole or part.

(3) The final decision may provide for suspension or termination of, or refusal

to grant or continue financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no financial assistance to which this regulations applies will thereafter be extended to the recipient determined by such decision to have failed to comply with this part, unless and until it corrects its noncompliance and satisfies TVA that it will fully comply with this part.

(g) *Posttermination proceedings.* (1) A recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive financial assistance from TVA if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request TVA to restore fully its eligibility to receive financial assistance from TVA. Any such request shall be supported by information showing that the recipient has met the requirements of paragraph (g)(1) of this section. If TVA determines that those requirements have been satisfied, it shall restore such eligibility.

(3) If TVA denies any such request, the recipient may submit a written request for a hearing, specifying why it believes TVA to have been in error. The recipient shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by TVA. The recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f)(3) of this section shall remain in effect.

[46 FR 30811, June 11, 1981, as amended at 68 FR 51357, Aug. 26, 2003]